Prosecutor [1] and say that in the case before me the presumption applies and that the learned Magistrate should have called upon the respondent to make his defence on the 1st charge.

With reference to the 2nd and 3rd charges, I would say this, however, that the presumptions mentioned in section 144 would appear to be applicable only in proceedings for an offence under Part V of the Ordinance and would not, in my view, apply therefore in reference to the 2nd and 3rd charges, which appear to be in reference to offences under other parts of the Ordinance. I would, therefore, make no order as to the 2nd and 3rd charges.

This case will, therefore, go back to the learned Magistrate to be dealt with as I have directed above. The acquittal on the 1st charge is set aside.

Order accordingly.

Solicitors: *Lim, Lim & Oon.*

Re N. R. MISTRI, DECD.

[O. C. J. (Rose C.J.) October 23, 1962]

[Singapore — Originating Summons No. 132 of 1962]

Revenue — Corporation duty — Corporation Duty Ordinance (Cap. 159), s.3(2)(b) — Application of income or profits — Distinction between "application" and "appropriation" — Ambiguity.

The testator by his will devised and bequeathed all his residuary property upon trust for sale and conversion upon trust to divide the same into equal portions and to stand possessed in respect of one such portion in trust for certain named charitable organisations situate in Bombay called the "Mistri Bombay Trust" with directions to hold the corpus in perpetuity and to apply and pay the net income from time to time arising therefrom for such one or more of the named charitable organisations in such shares and portions and manner as the trustees shall in their absolute discretion think fit.

The trustees contended that as they were in Singapore and as the selection of the charitable organisations comprising the "Mistri Bombay Trust" was made in Singapore and as the trustees paid the income arising from the corpus of the "Mistri Bombay Trust" in Singapore such income or profits were applied in Singapore and therefore not liable to be charged with corporation duty under section 3(2)(b) of the Corporation Duty Ordinance (Cap. 159).

Held: on an ordinary and grammatical interpretation of section 3(2)(b) of the Corporation Duty Ordinance the words of restriction referred to "religious, educational or charitable purpose." There is a distinction between "application" and "appropriation" and the power of selection between named charitable organisations comprising the "Mistri Bombay Trust" did not amount to application of the income or profits envisaged by section 3(2)(b) of the Corporation Duty Ordinance.

ORIGINATING SUMMONS.

T. H. A. Potts for the trustees.

M. Karthigesu for the commissioner.

Koh Eng Tian (Crown Counsel) for the State Advocate-General.

Rose C.J.: By clause 7 of his will dated the 17th of July, 1952 the testator, Navroji Rustomji Mistri, left the residue of his property upon trust to divide the same into two equal portions and to apply the income thereof for charitable purposes, partly within the Colony of Singapore — as it then was — and partly for certain charities situated in Bombay. It is with regard to the latter portion, which the testator designated the "Mistri Bombay Trust" that the present matter turns.

The originating summons raises a question of interpretation of section 3(2)(b) of the Corporation Duty Ordinance (Cap. 159). Section 3(1) of the Ordinance imposes a corporation duty from which certain classes of property are exempted by subsection (2).

Subsection 3(2)(b) reads as follows:—

> " (2) The following classes of property shall be exempt from such duty:—
>
> (b) property which, or the income or profits whereof, is or are applied to any religious, educational or charitable purpose within the Colony or the Federation of Malaya."

It is, of course, not in dispute that the nine charitable institutions set out in clause 7(b) of the will are all situated in India and therefore cannot be said to be "within the Colony or the Federation of Malaya". Learned counsel for the trustees of the estate contends, however, that these words of restriction refer not to the charitable purpose mentioned in the paragraph but should be related to the word "applied."

In other words the question to be determined is not the location of the charities but the place where the funds are applied or appropriated — and learned counsel submits that for the purposes of this subsection the terms "applied" and "appropriated" are to all intents and purposes synonymous.

He goes on to submit that the place where the funds are applied in Singapore, because it is, in practice, in the offices of the Hongkong and Shanghai Bank (Malaya) Trustee Limited that the allocation of these funds to the various charities is made.

In the first place, I am disposed to consider that upon an ordinary reading of subsection 3(2)(b) the words of restriction should reasonably be held to refer to the "religious, educational or charitable purpose". That would be the grammatical interpretation and if it is the correct one it is sufficient to determine the matter.

If, however, there is force in the contention of learned counsel for the trustees that there is an ambiguity and that it is, at the least, permissible to relate the words of restriction to the word "applied", is the position really any different?

I prefer the view expressed by learned counsel for the Commissioner of Estate Duties that there is a distinction between "application" and "appropriation".

The trustees have the power of selection between the nine charities mentioned in clause 7(b) of the will. That selection, I accept, takes

place in Singapore and the relevant appropriation to the various charities is also made in Singapore. The application, however, of such appropriated funds takes place, in my opinion, in the State of Bombay where these various charities are situated.

I am not dismayed by the fact, as submitted by learned counsel for the trustees, that by such an interpretation I am equating the term "application" to "payment", because it seems to me that it is, in effect, the matter of payment with which subsection 3(2)(b) is concerned.

Moreover, even if I am wrong in my view that there is no ambiguity and that "application" is equated to "payment" and not to "appropriation" there remains the consideration whether, in that event, the words of restriction could fulfil any useful purpose.

By this I mean that I find it difficult to envisage any case in which funds are appropriated or selected for allocation outside the Malayan Peninsula which could conceivably attract corporation duty. If I am right in this then it follows that the words of restriction would be tautologous; and one would naturally avoid an interpretation which would lead to that result.

Even if, as learned counsel for the trustees suggested might possibly be so, there is the odd, rare case in which the situation envisaged in the preceding paragraph could arise, one would naturally prefer, according to the normal rules of interpretation, to favour a construction that is of general application as against one applicable to such a very special, even hypothetical, set of circumstances.

For the reasons that I have given I am of the opinion that the position adopted by the Commissioner of Estate Duties is correct and that duty is payable in respect of the income applied to these charities in Bombay; and the declarations asked for by the trustees of the estate must be refused.

Costs of all parties be taxed as between solicitor and client and paid out of the estate of the testator.

Order accordingly.

Solicitors: *Rodyk & Davidson; Allen & Gledhill; State Advocate-General.*

K.M. OLI MOHAMED v. SIM SOO PHUANG & ANOR.

[C.A. (Rose C.J., Tan Ah Tah and Wee Chong Jin JJ.) October 25, 1962]

[Singapore — Civil Appeal No. 10 of 1962]

Landlord and Tenant — Recovery of possession — Claim under Control of Rent Ordinance (Cap. 242), s.15 (1)(d) & (h) — Whether includes matters arising under Municipal Ordinance and Local Government Ordinance — Local Government Ordinance, 1957, s.221(1).

In this case the respondents claimed possession of the premises known as No. 611, North Bridge Road, Singapore, under section 15(1)(d) of the Control of Rent Ordinance on the ground that the appellant had used the said premises for an illegal purpose, i.e., the storing of cinematograph films without a licence contrary to section 221(1) of the Local Government Ordinance, 1957. The appellant had been the tenant of the premises in question for many years and these premises had never been licensed as a place for storing cinematograph films. On June 8, 1959, a fire broke out in the backroom of the first floor of the said premises, and as a result the premises was badly damaged.

In the court below it was contended by counsel for the appellant that "illegal" in section 15(1)(d) of the Control of Rent Ordinance "connotes an absolute prohibition as distinct from an act which is disapproved by the law": there was no absolute prohibition against storing cinematograph films as one could do so with a licence; further it was contended that "guilty" in that paragraph implied criminal guilt and that a conviction was necessary as in England. The learned judge held that "illegal" there meant "not sanctioned by law" or "contrary to law". To store cinematograph films in premises not licensed for that purpose was contrary to section 221(1) of the Local Government Ordinance and was to use the premises for an illegal purpose. On appeal to the Court of Appeal,

Held: (1) having regard to paragraph (h) of section 15(1) of the Control of Rent Ordinance, matters arising under the Municipal Ordinance, the Local Government Ordinance or other matters of that kind were intended to be excluded from the purview of section 15(1)(d);

(2) the respondents having at the commencement of the trial abandoned their alternative claim under paragraph (h), the judgment of the learned trial judge must be set aside.

COURT OF APPEAL.

H. E. Cashin and *N. A. Christopher* for the appellant.

S. K. Lee for the respondents.

Rose C.J.: The matter to be decided falls within a narrow compass and raises only a point of interpretation relating to section 15(1)(d) of the Control of Rent Ordinance (Cap. 242).

The respondents claim possession of the premises in question on the ground that the appellant had used the premises for an illegal purpose, in that contrary to the provisions of section 221(1) and (2) of the Local Government Ordinance (No. 24 of 1957) he had stored certain cinematograph films without a licence from the Local Authority. The relevant entry in the Fifth Schedule is (t), i.e. the manufacture, storage or treatment of cinematograph or other films.

Section 15(1)(d) of the Control of Rent Ordinance reads as follows:—

"15.— (1) In the case of all premises such an order or judgment as is referred to in section 14 of this Ordinance may be made in any of the following cases, namely:—

x x x

(d) where the tenant or any other person occupying the premises under him, has been guilty of conduct constituting a nuisance or persistent annoyance to persons in the same building; or of using or permitting the use of the premises for illegal or immoral purposes."

On the face of it the wording would seem to be sufficiently wide to cover the present case, but learned counsel for the appellant submits